IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1815 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

HANIFBHAI @ CHHOTU KALUBHAI QURESHI

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 1815 of 2002

MS BANNA S DUTTA with

MR ANIL S DAVE for Petitioner No. 1

MS.HANSA PUNANI AGP for Respondent No. 1-3

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 21/03/2002

ORAL JUDGEMENT

The present petition has been filed by the petitioner - detenu challenging the detention order passed by the detaining authority. The detenu has been detained under the provisions of Gujarat Prevention of

Anti-Social Activities Act, 1985 (hereinafter referred to as `the Act of 1985') by order dated 23/11/2001 passed by the Police Commissioner, Ahmedabad City and he has been declared as bootlegger.

2. It is now well settled that unless the activities of a person as bootlegger has disturbed the maintenance of public order, he cannot be detained under the Act. Reliance is placed on a decision in the case of Piyush Kantilal Mehta Vs. Commissioner of Police, Ahmedabad & Ors. reported in AIR 1989 SC 491.

3. I have heard learned advocate for the petitioner and also perused the material on record. According to learned advocate for the petitioner, the detaining authority has passed the detention order relying upon the solitary offence registered against the petitioner before the D.C.B. Police Station, Ahmedabad City vide CR No.5008 of 2001 for the offences punishable under Sections 66(B), 65(A),(E) and 81 of Prohibition Act on 20/11/2001 and has also relied upon statement of witnesses. The detaining authority has passed the detention order on 23/11/2001. He has mainly argued that the petitioner has written a letter along with representation on 29/11/2001 and the same has been received by the competent authority, and demanded copies of statements of other witnesses which were recorded under Sec.161 of Criminal Procedure Code, 1973 at the time of investigation and grounds of co-detenus and the associates of the petitioner - detenu, but the competent authority has not supplied any of the documents. No order regarding representation of the petitioner has been passed by the competent authority till 5/1/2002 and thereafter, the order rejecting the representation is communicated to the petitioner on 10/1/2002. The learned counsel for the petitioner tenders the copy of the illegible order communicated to the petitioner. The same is taken on record. According to the learned advocate for the petitioner there is a delay in considering the representation and also there is a delay in communicating the said representation of the petitioner, which is unconstitutional. In support of his say, the learned advocate for the petitioner has placed reliance upon the decision of the Hon'ble Supreme Court reported in AIR 1981 SC 1126, in which the Honourable Supreme Court has held as under :-

> "We would emphasise that it is the duty of the State to proceed to determine representations of the character above mentioned with the utmost expedition, which means that the matter must be

taken up for consideration as soon as such a representation is received and dealt with continuously (unless it is absolutely necessary to wait for some assistance in connection with it) until a final decision is taken and communicated to the detenu. This not having been done in the present case we have no option but to declare the detention unconstitutional. We order accordingly, allow the appeal and direct that the appellant be set at liberty forthwith."

4. Since the detaining authority has not decided the representation of the petitioner and not communicated the decision of the representation of the petitioner promptly, in view of the above judgment relied upon by the learned advocate for the petitioner, the order of detention is illegal and the same cannot be sustained. Learned advocate for the petitioner does not press any other points.

5. In view of the above, the petition is allowed. The order of detention dated 23/11/2001 passed against the detenu is hereby quashed and set aside. The detenu namely Hanifbhai alias Chhotu Kalubhai Qureshi is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly with no order as to costs. D.S. Permitted.

(R.P.DHOLAKIA,J.)

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